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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Placer)

RENE COREA II,

Plaintiff and Appellant,

v.

JOHN WILLIAM KIDDER,

Defendant and Respondent.

C085821

(Super. Ct. No. SCV0037617)

On April 7, 2015, defendant John William Kidder rear-ended plaintiff Rene Corea II's vehicle while plaintiff was stopped at a red light. In August 2017, a jury found defendant's negligence was not a substantial factor in causing harm to plaintiff. On appeal, plaintiff argues the jury's verdict was not supported by substantial evidence. In his opening brief, plaintiff also argued the trial court erred in failing to dismiss three allegedly biased jurors, but he abandoned this argument in his reply brief, and we will not address it further. We conclude substantial evidence supports the jury's verdict. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves two car accidents that occurred on April 6 and 7, 2015. As to the first car accident, plaintiff testified that on April 6, 2015, the rear of his car was hit by a car that had spun out of control. He suffered injuries to his neck and lower back due to the collision and had a pain level of “three or four.” He did not seek medical treatment.

The second car accident occurred on April 7, 2015. Plaintiff was stopped at a red light when he was rear-ended by defendant’s car. Defendant testified at trial that he was going 30 miles per hour just prior to the accident, well under the 45-mile-per-hour speed limit. He braked and swerved but was unable to avoid “clip[ping]” plaintiff’s car. Defendant testified his airbags did not deploy. The parties stipulated at trial that defendant was at fault for the accident.

After the accident, plaintiff and defendant exchanged paperwork, and plaintiff drove off. Defendant testified plaintiff never said he was injured and did not appear to be in physical distress. Plaintiff testified he did not experience pain at the scene, but sought treatment from a chiropractor the next day. Defendant was not injured.

Plaintiff testified at trial that, as a result of the accident with defendant, his neck and lower back pain increased to a level of “seven to eight.” He also suffered numbness in his arms and right leg, and “nonstop” headaches. Both the accidents hurt equally. Plaintiff sought treatment from a neurologist within two weeks of the accident and also saw a pain specialist. At the time of trial, plaintiff was still in so much pain that his sleep was disrupted. He had returned to work as a welder fabricator but still took pain medication. Plaintiff’s wife testified his ability to work had “drastic[ally] declined.”

Plaintiff testified he was involved in two car accidents several years before the April 2015 accidents. He was not injured in either of the earlier accidents.

Plaintiff suffered a work-related back injury in 2006, but it resolved with physical therapy.

Dr. Ardavan Aslie, an orthopedic spine surgeon, testified he treated plaintiff beginning in 2016. By the time plaintiff saw Dr. Aslie, he had “exhausted all the non-operative care” for his injuries, including seeing a chiropractor and receiving injections for pain management. Dr. Aslie ordered a nerve conduction study and an MRI and conducted a physical exam. Based on these examinations, Dr. Aslie opined plaintiff suffered from two damaged disks and three disk herniations. Dr. Aslie testified the injuries were visible on plaintiff’s MRI. Some of the damage was due to “wear and tear,” but Dr. Aslie also observed evidence of trauma and testified plaintiff’s injuries were due to a car accident. Dr. Aslie believed 50 to 60 percent of plaintiff’s injuries were due to the second accident, while 40 to 50 percent were due to the first accident. Dr. Aslie recommended “extensive” spinal surgery for plaintiff, including a disk replacement surgery and a lumbar surgery. Had plaintiff not been in the car accident, he would not require surgery.

Dr. Marc Maskowitz, an interventional pain physician, testified on behalf of plaintiff as a medical expert. Dr. Maskowitz testified he reviewed plaintiff’s MRI’s and observed disk degeneration that was common with aging and multiple bulging disks, with one tear that was likely due to trauma and undue stress. Dr. Maskowitz opined that the MRI of plaintiff’s neck showed strong signs of a recent acute injury, although the radiologist did not report a finding of traumatic spine injury. Dr. Maskowitz testified plaintiff suffered from “cervical facet syndrome and cervical radiculopathy and lumbar low back, axial pain” due to the accidents. He “c[ould not] say” whether the second accident was any more or less responsible for the plaintiff’s injuries than the first accident. It was possible the second accident could have simply caused an aggravation of

the injury already sustained in the first accident. But it was also possible the second accident caused plaintiff's injuries.

Dr. William Hoddick, a diagnostic radiologist, testified as an expert on behalf of defendant. In Dr. Hoddick's opinion, none of plaintiff's MRI's showed any evidence of injury or traumatic event, only degenerative changes from aging.

Dr. Anh Le, an orthopedic surgeon with a specialization in spinal surgery, testified as an expert on behalf of defendant. Dr. Le examined plaintiff in April 2017 and reviewed his medical records, including his scans. Dr. Le observed preexisting degenerative "wear and tear" in plaintiff's neck and lumbar spine. Although plaintiff sprained his neck and back during the April 2015 accidents, there were "no major significant ligament, bony or disk injuries." Dr. Le did not think plaintiff was a good candidate for spinal surgery. In Dr. Le's opinion, plaintiff's subjective complaints "d[id] not match" the objective findings. Dr. Le testified it was "possibl[e]" plaintiff was motivated by financial gain.

At trial, jurors were shown photographs of the damage done to each of the cars involved in the April 2015 accidents. John Martin, an expert in forensic vehicle damage analysis, testified on behalf of plaintiff that half of the structural damage to plaintiff's vehicle came from the first collision on April 6, and half came from the second collision on April 7.

Laurence Neuman testified on behalf of defendant as an accident reconstruction expert. Neuman estimated the speed differential between the two cars in the first accident was 16 miles per hour and described the crash as the "low end of moderate." The second accident involved a speed differential of 5 to 8 miles per hour. The accident was "minor" due to the low impact speed.

Plaintiff filed a timely appeal.

DISCUSSION

Plaintiff contends there is insufficient evidence to support the jury's finding that defendant's negligence was not a substantial factor in causing harm to him. We disagree.

“When a [jury's] factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the [jury].” (*Bowars v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.)

Despite plaintiff's contentions, there was substantial evidence supporting the jury's verdict. In essence, this case involved a battle of experts where the experts disagreed on the harm caused by the two car accidents. Defendant's experts disagreed with Drs. Aslie and Maskowitz's conclusions plaintiff's neck and back were injured during the second accident. Dr. Hoddick testified there was no evidence on plaintiff's MRIs of any injury or traumatic event, only degenerative changes due to aging. Dr. Le similarly testified he observed preexisting degenerative changes. Although plaintiff may have sprained his back and neck during the accidents, Dr. Le testified he suffered no major or significant injuries. In addition, Dr. Le testified plaintiff's subjective complaints of pain did not match the objective findings. Moreover, the jury heard testimony from Neuman, defendant's accident reconstruction expert, that the second accident involving defendant had low impact speed and was “minor.” Based on the record, there is sufficient evidence supporting the finding defendant's negligence was not a substantial factor in causing harm to plaintiff.

DISPOSITION

The judgment is affirmed. Defendant John William Kidder is entitled to his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

_____/s/
HOCH, J.

We concur:

_____/s/
BUTZ, Acting P. J.

_____/s/
DUARTE, J.